

AMENDED IN ASSEMBLY AUGUST 21, 2006

AMENDED IN ASSEMBLY AUGUST 7, 2006

AMENDED IN ASSEMBLY JUNE 22, 2006

AMENDED IN SENATE MAY 26, 2006

AMENDED IN SENATE MARCH 27, 2006

SENATE BILL

No. 1428

Introduced by Senator Scott

February 22, 2006

An act to add and repeal Section 679-~~to~~ *of* the Unemployment Insurance Code, relating to unemployment insurance.

LEGISLATIVE COUNSEL'S DIGEST

SB 1428, as amended, Scott. Unemployment compensation: employer: motion picture industry.

Existing law requires that the determination of the employer-employee relationship be made pursuant to common-law principles, with specified exceptions. Existing law provides that when an individual or entity contracts to supply an employee to perform services for a customer or client, and is a leasing employer or a temporary services employer, as defined, the individual or entity is the employer of the employee who performs the services, provided that certain requirements are satisfied.

This bill would provide that, notwithstanding those provisions and until January 1, ~~2011~~ 2012, any employing unit that is a motion picture payroll services company, as defined, shall be treated as an employer of a motion picture production worker, as defined. This bill would require any employing unit operating as a motion picture

payroll services company to report that status to the Employment Development ~~Department, or its intent to discontinue that status, within specified periods of time, as provided.~~ *Department. This bill would also require any employment unit operating as a motion picture payroll services company that quits business, to file with the director, a final return and report of wages, as provided, and to notify the motion picture production companies and allied motion picture services of its intent to quit business, as provided.* This bill would also provide that the employing unit's status would be applied to its affiliated entities, as defined, and would require specified actions by those affiliated entities and the motion picture payroll services company when acquired or created by the motion picture payroll services company. *This bill would also require the director to notify an entity, as provided, that does not satisfy the requirements of a motion picture payroll services company, as provided, of the facts and circumstances upon which the determination was made.*

This bill makes statements with regard to its impact on employing units who do not elect to be considered motion picture payroll services companies.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 679 is added to the Unemployment
2 Insurance Code, to read:
3 679. (a) Notwithstanding Sections 606.5 ~~and 621~~, 621, and
4 678, for the purposes of this code, "employer" means any
5 employing unit that is a motion picture payroll services company
6 who pays ~~the~~ *and controls the payment of* wages of a motion
7 picture production worker for services *either* to a motion picture
8 production company or *to* an allied motion picture services
9 ~~company and that has~~ *company. The motion picture payroll*
10 *services company must also have* filed a timely statement of its
11 intent to be the employer of motion picture production workers
12 pursuant to subdivision (b).
13 (b) (1) Any employing unit ~~operating as a meeting the~~
14 *requirements of a* motion picture payroll services company, as
15 defined by this section, that intends to be treated as an employer
16 of motion picture production workers pursuant to subdivision (a)

1 shall file a statement with the department that declares its intent
2 to be the employer of motion picture production workers,
3 pursuant to this section, within 15 days after first paying wages
4 to the workers. ~~The director shall prescribe the form and manner~~
5 ~~of the statement. The statement shall include identification of all~~
6 ~~affiliated entities as defined by this section.~~

7 ~~(2) Any employing unit that operated as a motion picture~~
8 ~~payroll services company prior to January 1, 2007, that intends to~~
9 ~~be treated as an employer of motion picture production workers~~
10 ~~pursuant to this section shall file the statement required by this~~
11 ~~section by January 15, 2007.~~

12 ~~(3) The director may prevent a motion picture payroll services~~
13 ~~company that fails to file a timely statement, as required by this~~
14 ~~section, from being treated as an employer of motion picture~~
15 ~~production workers.~~

16 ~~(4) Any motion picture payroll services company that filed a~~
17 ~~statement of its intent to be an employer of motion picture~~
18 ~~production workers pursuant to this section shall notify the~~
19 ~~department of its intent to discontinue its status as an employer~~
20 ~~under this section by filing a statement of that intent with the~~
21 ~~department no later than December 15th of the year preceeding~~
22 ~~the year for which the revocation is to take effect.~~

23 ~~(2) Any employing unit operating as a motion picture payroll~~
24 ~~services company as of January 1, 2007, that intends to be~~
25 ~~treated as an employer of motion picture production workers~~
26 ~~pursuant to this section, shall file a statement with the~~
27 ~~department that declares its intent to be the employer of motion~~
28 ~~picture production workers, pursuant to this section, by January~~
29 ~~15, 2007. The statement shall include identification of all~~
30 ~~affiliated entities as defined by this section.~~

31 ~~(3) Any motion picture payroll company that quits business~~
32 ~~shall:~~

33 ~~(A) Within 10 days of quitting business:~~

34 ~~(i) File with the director, a final return and report of wages of~~
35 ~~its workers, as required by Section 1116.~~

36 ~~(ii) File all statements required by this subdivision.~~

37 ~~(B) Within 30 days of quitting business, notify the motion~~
38 ~~picture production companies and allied motion picture services~~
39 ~~companies, with respect to which they have been treated as the~~

1 *employer of the motion picture production workers, of its intent*
2 *to quit business.*

3 (4) *The director may prevent a motion picture payroll services*
4 *company that fails to file a timely statement, as required by this*
5 *section, from being treated as an employer of motion picture*
6 *production workers, for a period not to exceed the period for*
7 *which the statement is required.*

8 (5) Any statement filed by a motion picture payroll services
9 company pursuant to this subdivision shall be applied to all
10 affiliated entities of the motion picture payroll services company
11 in existence at the time the statement is filed.

12 (c) For each rating period beginning on or after January 1,
13 2007, in which an employer operating as a motion picture payroll
14 services company obtains or attempts to obtain a more favorable
15 rate of contributions ~~by reporting~~ under this section in a manner
16 that is due to deliberate ignorance, reckless disregard, fraud,
17 intent to evade, misrepresentation, or willful nondisclosure, the
18 director shall assign the maximum contribution rate plus 2
19 percent for each applicable rating period, the current rating
20 period, and the subsequent rating period. Contributions paid in
21 excess of the maximum rate under this section shall not be
22 credited to the employing unit's reserve account.

23 (d) (1) On and after January 1, 2007, whenever a motion
24 picture payroll services company creates or acquires a motion
25 picture payroll services company, or acquires substantially all of
26 the assets of a motion picture payroll services company, the
27 created or acquired motion picture payroll services company
28 ~~shall do the following:~~ *shall:*

29 ~~(A) Determine its reserve account, in accordance with Section~~
30 ~~1052, as if an application for transfer of the reserve account of~~
31 ~~the motion picture payroll services company that created or~~
32 ~~acquire it had been made under Section 1051.~~

33 ~~(B) Determine its rate of contribution in accordance with~~
34 ~~Section 1052.~~

35 ~~(2) Notwithstanding Sections 135.1 and 135.2, the created or~~
36 ~~acquired motion picture company described in paragraph (1)~~
37 ~~shall constitute a separate employing unit.~~

38 ~~(3) Prior to the creation or acquisition of a motion picture~~
39 ~~payroll services company that will be an affiliated entity, a~~
40 ~~motion picture payroll services company shall seek the approval~~

1 of the department to apply the provisions of this section to the
2 created or acquired entity. The department may promulgate
3 regulations necessary to implement the provisions of this
4 paragraph.

5 (e) For purposes of this section, the following definitions
6 apply:

7 (1) “Affiliated entity” means any one or more motion picture
8 payroll services company or companies owned or controlled,
9 directly or indirectly, by the same interest. For purposes of this
10 paragraph, “owned or controlled” means ownership or control
11 that exceeds 50 percent of the voting stock or profits interest of
12 the motion picture payroll services company.

13 (A) *Constitute a separate employing unit, notwithstanding*
14 *Sections 135.1 and 135.2.*

15 (B) *Have its reserve account and rate of contributions*
16 *determined in accordance with subdivision (e).*

17 (C) *Notify the department of the entity being created or*
18 *acquired and the nature of its affiliation to that entity.*

19 (2) *The department may promulgate regulations requiring a*
20 *motion pictures payroll services company, prior to the creation*
21 *or acquisition of a motion picture payroll services company that*
22 *will be an affiliated entity, to seek the approval of the department*
23 *to apply the provisions of this section to the created or acquired*
24 *entity.*

25 (e) *When a motion picture payroll services company transfers*
26 *all or part of its business or payroll to another motion picture*
27 *payroll services company, as defined by this section, the reserve*
28 *account attributable to the transferor shall be transferred to the*
29 *transferee motion picture payroll services company, and the*
30 *transferee’s rate of contribution shall be determined in*
31 *accordance with Section 1052. The transferee shall notify the*
32 *department within 15 days of the transfer of the business or*
33 *payroll.*

34 (f) For purposes of this section, the following definitions
35 apply:

36 (1) “Affiliated entity” means any one or more motion picture
37 payroll services company or companies that are united by factors
38 of common ownership, management, or control as prescribed by
39 Section 1061.

(2) “Allied motion picture services company” means any person engaged in an industry closely allied with, and whose work is integral to, a motion picture production company in the development, production, or postproduction of a motion picture, excluding the distribution of the completed motion picture and any activities occurring thereafter, and who hires from the same pool of craft and guild or union workers, actors, or extras as a motion picture production company.

(3) “Motion picture” means a motion picture of any type, including a theatrical motion picture, a television production, a television commercial, a music video, or any other type of motion picture regardless of its theme or the technology used in its production or distribution.

(4) (A) “Motion picture payroll services company” means any employing unit that directly or through its ~~affiliates~~ *affiliated entities* meets all of the following criteria:

(i) Contractually provides the services of motion picture production workers to a motion picture production company or to an allied motion picture services company.

(ii) Is a signatory to a collective bargaining agreement for one or more of its clients.

(iii) Controls the payment of wages to the motion picture production workers and pays those wages from its own account or accounts.

(iv) Is contractually obligated to pay wages to the motion picture production workers without regard to payment or reimbursement by the motion picture production company or allied motion picture services company.

(v) At least 80 percent of the wages paid by the motion picture payroll services company each calendar year are paid to workers associated between contracts with motion picture production companies and motion picture payroll services companies.

(B) If the director determines that any employing unit is operating as a motion picture payroll services company but is failing to comply with any of the provisions of subparagraph (A) of paragraph (4), *the employing unit is subject to determination of the employer-employee relationship pursuant to this code. When the director’s ruling becomes final, the director may preclude the employing unit from being classified as a motion picture payroll services company pursuant to this section. Upon*

1 ~~the director's determination, the employing unit is subject to~~
2 ~~determination of the employer-employee relationship pursuant to~~
3 ~~this code and common law principles. company pursuant to this~~
4 ~~section for up to three years from the date of the determination.~~

5 (5) "Motion picture production company" means any
6 employing unit engaged in the development, production, and
7 postproduction of a motion picture, excluding the distribution of
8 the completed motion picture and any activities occurring
9 thereafter.

10 (6) "Motion picture production worker" means an individual
11 who provides services to a motion picture production company or
12 allied motion picture services company and who, with regard to
13 those services, is reported under this part as an employee by the
14 motion picture payroll services company. An individual who has
15 been reported as an employee by the motion picture payroll
16 services company, without regard to the individual's status as an
17 employee or independent contractor, shall be the employee of the
18 motion picture payroll services company for the purposes of this
19 code throughout the contractual period with the motion picture
20 payroll services company.

21 (7) "Wages" shall have the same meaning given the term in
22 Article 2 (commencing with Section 926) of Chapter 4 of Part 1
23 of Division 1, and shall include residual payments.

24 ~~(f) An employing unit shall have the right of notice and appeal~~
25 ~~pursuant to this provisions of this part.~~

26 ~~(g) This section shall remain in effect only until January 1,~~
27 ~~2011, and as of that date is repealed, unless later enacted statute,~~
28 ~~which is chaptered before January 1, 2011, deletes or extends~~
29 ~~that date.~~

30 (g) *If the director determines that an entity does not meet any*
31 *of the requirements specified by this section, the director shall*
32 *give notice of its determination to that entity pursuant to Section*
33 *1206. The notice shall contain a statement of the facts and*
34 *circumstances upon which the determination was made. The*
35 *entity so noticed shall have the right to petition for review of the*
36 *director's determination within 30 days of the notice, as provided*
37 *in Section 1222.*

38 (h) *The director shall prescribe the form and manner of the*
39 *statements and information required to be filed or reported by*
40 *this section.*

1 (i) *On or before December 31, 2010, the department may*
2 *report to the Legislature regarding the impact of this section on*
3 *the Unemployment Insurance Fund and the entertainment*
4 *industry.*

5 (j) *This section shall remain in effect only until January 1,*
6 *2012, and as of that date is repealed, unless a later enacted*
7 *statute, which is chaptered before January 1, 2012, deletes or*
8 *extends that date.*

9 SEC. 2. Nothing in this act shall be construed to change
10 existing law as it relates to employing units who do not elect to
11 be considered a motion picture payroll services company
12 pursuant to Section 679 of the Unemployment Insurance Code.